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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,532	03/01/2004	Mark S. Gasaway	HO-P02877US0	5168
26271	7590	05/19/2006	EXAMINER	
FULBRIGHT & JAWORSKI, LLP			MILLS, DANIEL J	
1301 MCKINNEY			ART UNIT	
SUITE 5100			PAPER NUMBER	
HOUSTON, TX 77010-3095			3679	

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/790,532	Applicant(s) GASAWAY ET AL.	
	Examiner Daniel J. Mills	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The objection to the specification is withdrawn in view of the amendment dated 2/24/2006.

Drawings

The objection to the drawings is withdrawn in view of the arguments dated 2/24/2006

Claim Objections

Claim 20 is objected to because of the following informalities: "at least one member, capable" line 4 should be changed to --said member capable--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There was no original disclosure of the method including the step of "via rotating a notch in the tab" (lines 4).

Art Unit: 3679

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16, 23, 25, 26, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 recites the limitation "the curve" in line1. There is insufficient antecedent basis for this limitation in the claim.

Claims 25, 27, and any claims dependent thereon recite the limitation "said tab slots" in (lines 8). There is insufficient antecedent basis for this limitation in the claim. Applicant claims "at least one tab slot", it is unclear whether applicant attempts to limit the claim to one or more than one tab slot. As applicant has antecedent basis for "at least one tab slot", examiner will assume this is what was intended for purposes of this office action.

Claims 16 and 23 include the limitation "via rotating a notch in the tab" (lines 4) it is not clear in what way a notch can be rotated in the tab.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-8, 10-11, 13-15, 17, 20-24, 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Carroll (US 5,330,066).

Regarding claim 1, Carroll discloses a brace assembly comprising, at least one post (13), comprising at least one stabilizing surface (23) and at least one securing surface (27), at least one member (35), comprising at least one tab (39), wherein said stabilizing surface comprises at least one opening (31), and said securing surface comprises at least one tab-slot (33), wherein said member passes through said opening in the stabilizing surface, and wherein said tab engages said tab slots in said securing surface, wherein said tab is engaged with said tab slot so as to prevent disengagement of said tab from said tab slot (column 4 lines 47-50).

Regarding claim 2, Carroll discloses a brace assembly wherein said stabilizing (23) surface and said securing surface (27) are both in the outer surface of said post.

Regarding claim 3, Carroll discloses a brace assembly further comprising at least one angle brace foot post (41), and at least one angle brace member (17).

Regarding claim 4, Carroll discloses a brace assembly wherein said post (13) is comprised of metal tubing (13 forms a rectangular tube).

Regarding claim 6, Carroll discloses a brace assembly wherein said opening (31) corresponds in shape and size to said member (35).

Regarding claim 7, Carroll discloses a brace assembly wherein said member passes snugly through said opening.

Regarding claim 8, Carroll discloses a brace assembly wherein said opening is located directly opposite to at least one tab-slot, so that the longitudinal axis of the member is oriented at an angle of about 90° relative to said stabilizing surface.

Regarding claim 10, Carroll discloses a brace assembly wherein the size and shape of said tab-slots corresponds to said tabs.

Regarding claim 11, Carroll discloses a brace assembly wherein the tab is engaged with the tab-slot by welding (column 4 lines 47-50). The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "bending, crimping, gluing, welding, pinning, screwing, twisting, bolting, and via a notch in the tab" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 13, Carroll discloses a brace assembly as set forth in claim 13. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "cut by laser" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 14, Carroll discloses a method for assembling a brace assembly, comprising, providing at least one post (13 is provided), comprising at least one stabilizing surface (27) and at least one securing surface (23), providing at least one member (35 is provided), comprising at least one tab (39), wherein said stabilizing surface comprises at least one opening (31), and said securing surface comprises at least one tab-slot (33), passing said member through said opening (this is inherent), passing said tab into said tab-slot (this is inherent), and engaging the tab to the tab slot

Art Unit: 3679

to prevent disengagement, provided the engaging is not accomplished by welding (column 4 lines 47-50).

Regarding claim 15, Carroll discloses a method for assembling a brace assembly wherein said tab engages in its corresponding tab-slot without requiring welding or additional fastening (it is inherent to Carroll that friction would engage the tab in the tab slot).

Regarding claim 17, Carroll discloses a method for assembling a brace assembly further comprising passing said member through said opening at an angle wherein the longitudinal axis of the member is at approximately a 90° angle to the stabilizing surface.

Regarding claim 20, Carroll discloses a kit for assembling a fence brace assembly having component parts capable of being assembled, the kit comprising, at least one post (13), capable of being joined to at least one member (35), at least one member (35), capable of being joined to at least one post (13), said post comprising, at least one stabilizing surface (23), comprising at least one opening (31), and at least one securing surface (27), comprising at least one tab-slot (33), said member comprising, at least one tab (39), wherein said member is capable of penetrating said opening in said stabilizing surface of said post, and wherein said tab on said member is capable of engaging the tab-slot in said securing surface of said post to prevent disengagement, and whereby said member may be joined to said post.

Regarding claim 21, Carroll discloses a kit for assembling a fence brace assembly having component parts capable of being assembled wherein said opening (31) in said post (13) corresponds in shape and size to said member (35).

Regarding claim 22, Carroll discloses a kit for assembling a fence brace assembly having component parts capable of being assembled wherein said tab-slot in said post corresponds in shape and size to said tab.

Regarding claim 23, Carroll discloses a kit for assembling a fence brace assembly having component parts capable of being assembled wherein the tab is engaged with the tab-slot by welding (column 4 lines 47-50). The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "bending, crimping, gluing, welding, pinning, screwing, twisting, bolting, and via a notch in the tab" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 24, Carroll discloses a brace assembly wherein the tab is not engaged with the tab slot by a weld (column 4 lines 47-50). The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "bending, crimping, gluing, welding, pinning, screwing, twisting, bolting, and via a notch in the tab" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 27, Carroll discloses a fence brace assembly at least one post, comprising at least securing surface; at least one member, comprising at least one tab wherein said stabilizing surface comprises at least one opening, and said securing

Art Unit: 3679

surface comprises at least one tab-slot; wherein said member passes through said opening in the stabilizing surface; wherein said tab engages said tab slots in said securing surface; and wherein a continuous terminal portion of the member, said portion extending from a tab, is disposed within the post in substantially continuous contact with an inner surface of the post (as shown in Figure 4).

Claims 1, 14, 20, 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Sweeney et al. (US 823,451).

Regarding claims 1, 14, 20, 25, and 27, Sweeney et al. discloses a fence brace assembly and method for assembling a fence brace assembly, and a kit for assembling a fence brace assembly comprising at least one post (1), comprising at least one stabilizing surface (at entry of 4) and at least one securing surface (at rivet); at least one member (4), comprising at least one tab (15); wherein said stabilizing surface comprises at least one opening (13), and said securing surface comprises at least one tab-slot (14); wherein said member passes through said opening in the stabilizing surface; wherein said tab engages said tab slot in said securing surface, and wherein said tab is curved or bent (15 is bent to form a rivet head).

Regarding claim 26, Sweeney et al. discloses a fence brace assembly wherein the curve is approximately for 90 degrees.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3679

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5,330,066).

Regarding claim 5, Carroll discloses a brace assembly wherein said member (35) is comprised of metal channel. Carroll fails to disclose that tubular metal is used for said member (35). However, it was well known in the art at the time of applicant's invention that box section tubular metal member are stiffer and stronger than channel metal members, and therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use a tubular box section member due to increased strength and stiffness. No new or unexpected results would have been seen from this change.

Regarding claim 16, Carroll discloses a method for assembling a brace assembly wherein the tab is engaged with the tab-slot but fails to disclose that this engagement is due to one of bending, crimping, gluing, pinning, screwing, twisting, bolting, and via a notch in the tab, however, Carroll discloses that all junctions can be secured by a "weld or otherwise". Gluing is an art recognized equivalent to welding, it would have been obvious at the time of applicant's invention to modify Carroll to secure all joints by the use of adhesive or glue to reduce cost and allow easy assembly.

Claims 9, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5,330,066) as applied to claims 1-4, 6-8, 10-11, 13-17, 20-23, above, and in further view of Shaw (US 6,406,003).

Regarding claim 9, Carroll discloses a brace assembly wherein said opening (31) is not directly opposite, but offset from at least one tab-slot (33) (the lower portion of 31 is offset from the upper tab-slot 33). Carroll fails to disclose that the longitudinal axis of the member is oriented at a non 90° angle relative to said stabilizing surface.

Shaw teaches an angle brace assembly wherein the longitudinal axis of the member (64) is oriented at a non 90° angle relative to said stabilizing surface (surface of 62B) in order to brace the post (62B) (column 4 lines 56-57). Therefore it would have been obvious to one of ordinary skill in the art at the time of applicant's invention, to modify the arrange of Carroll to include an angle brace assembly as taught by Shaw wherein the longitudinal axis of the member is oriented at a non 90° angle relative to said stabilizing surface, such that one lower tab (39) of the member (35) is inserted into the upper tab-slot (33) of the post (13).

Regarding claim 18, Carroll in view of Shaw discloses a method for assembling a brace assembly further comprising passing said member through said opening at an angle wherein the longitudinal axis of the member is at a non 90° angle to the stabilizing surface.

Claims 12, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5,330,066) as applied to claims 1-4, 6-8, 10-11, 13-17, 20-23, above, and in further view of Sweeney and Sylva (Sweeney - US 823,451).

Regarding claim 12, Carroll discloses a brace assembly but fails to disclose at least one recess in the securing surface capable of receiving a bent tab.

Sweeney teaches at least one recess (17) in the securing surface (into which 15 is inserted) capable of receiving a bent tab (15) for the purpose of giving a good appearance free from crevices, and giving a rigid connection. Accordingly it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the arrangement of Carroll to include a recess as taught by Sweeney for the purpose of giving a good appearance free from crevices, and giving a rigid connection.

Regarding claim 19, Carroll in view of Sweeney discloses a method for assembling a brace assembly further comprising bending (the operation of riveting is a process of bending or distortion - see column 3 line 5) said tab (7) over an edge of said tab-slot (the inner edge of bevel 17) into a recess (17) in said securing surface, such that said tab is flush with said securing surface.

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5,330,066) in view of Vitsky et al. (US 4,926,759).

Regarding claim 25, Carroll discloses a fence brace assembly comprising at least one post, comprising at least one stabilizing surface and at least one securing surface; at least one member, comprising at least one tab; wherein said stabilizing surface comprises at least one opening, and said securing surface comprises at least one tab-slot; wherein said member passes through said opening in the stabilizing surface; wherein said tab engages said tab slot in said securing surface, but fails to disclose that said tab is curved or bent.

Vitsky et al. teaches that a tab (15) engaging a tab slot (13) is curved or bent to secure the tab to the tab slot cheaply and securely. Accordingly, it would have been

Art Unit: 3679

obvious to one of ordinary skill in the art at the time of applicant's invention to modify the arrangement of Carroll to include a tab engaging a tab slot which is curved or bent to secure the tab to the tab slot cheaply and securely as taught by Vitsky et al.

Regarding claim 26, Carroll in view of Vitsky et al. results in a fence brace assembly wherein the curve is approximately for 90 degrees.

Response to Arguments

Applicant's arguments filed 2/24/2006 have been fully considered but they are not persuasive.

Applicant's amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

The amendments to the claims have been considered and a final rejection has been made for the reasons stated above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Harmon (Us 2,113,403) is cited for pertaining to brace structures.

Applicant's amendment (the addition of new claims 24-27, amendments made to claims 1, 14, 16, 20, 23) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Mills whose telephone number is 571-272-8115. The examiner can normally be reached on M-F 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3679

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DJM
5/8/2005



James R. Britain
Primary Examiner